

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

KEITH SHERMAN NEAL,

Defendant.

No. CR-02-0195-FVS

ORDER DENYING DEFENDANT'S
MOTION TO MODIFY SENTENCE

THIS MATTER came before the Court on Defendant's motion to modify sentence pursuant to 18 U.S.C. § 3582(c)(2). (ECF No. 44). Assistant United States Attorney Aine Ahmed represents the United States, and Defendant is proceeding pro se.

BACKGROUND

On November 16, 2005, Defendant pleaded guilty pursuant to a plea agreement. (ECF No. 34). Defendant's guideline range, based on a total offense level of 31 and a criminal history category of III, was 135 to 168 months. Defendant, however, was sentenced to 120 months incarceration, the statutory mandatory minimum.

DISCUSSION

Defendant requests a reduction of sentence pursuant to 18 U.S.C. § 3582(c)(2) based upon the United States Sentencing Commission's Amendment 750 which has changed the Drug Quantity Table for offenses involving cocaine base (crack). 18 U.S.C. § 3582(c)(2), the statutory basis for Defendant's motion, provides as follows:

[I]n the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C.

1 994(o), upon motion of the defendant or the Director of the
2 Bureau of Prisons, or on its own motion, the court may reduce the
3 term of imprisonment, after considering the factors set forth in
4 section 3553(a) to the extent that they are applicable, if such a
5 reduction is consistent with applicable policy statements issued
6 by the Sentencing Commission.

7 The language of Section 3582(c)(2) provides the Court with
8 authorization to reduce a sentence where the applicable "sentencing
9 range" has been subsequently lowered. Given that Defendant was
10 sentenced pursuant to a statute, and not under the United States
11 Sentencing Guidelines, there was no "sentencing range" which could be
12 subsequently lowered by the Sentencing Commission. Consequently,
13 Section 3582(c)(2) does not confer jurisdiction on this Court to
14 resentence Defendant. *U.S. v. Jackson*, 577 F.3d 1032, 1035-1036 (9th
15 Cir. 2009) (a defendant sentenced pursuant to a mandatory minimum, and
16 not a sentencing guideline range, is ineligible for a sentence
17 reduction under Section 3582(c)(2)); *U.S. v. Paulk*, 569 F.3d 1094,
18 1095 (9th Cir. 2009) (per curiam).

19 Since Defendant is serving a statutory mandatory minimum
20 sentence, a reduction of his sentence is not authorized under Section
21 3582(c)(2). Accordingly, Defendant's motion to modify sentence
22 pursuant to 18 U.S.C. § 3582(c)(2) (**ECF No. 44**) is **DENIED**.

23 **IT IS SO ORDERED.** The District Executive shall forward copies of
24 this order to Defendant and counsel for the Government.

25 DATED this 18th day of January, 2012.

26
S/Fred Van Sickle
Fred Van Sickle
Senior United States District Judge